

BILL ANALYSIS

C.S.H.B. 3270
By: Dutton
Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2020 the Texas Third District Court of Appeals issued an opinion that, in effect, challenges many of the provisions of the accountability and intervention system. Furthermore, the ruling, almost to the point, eliminates the authority for the commissioner of the Texas Education Agency (TEA) to do what the Texas Legislature asked of the commissioner and the TEA in terms of accountability for public schools in Texas. C.S.H.B. 3270 seeks to address the specific provisions relevant to the court's ruling and clarify statute to ensure that the accountability system and the interventions process continue to operate as the legislature intended.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of education in SECTION 2.03 of this bill.

ANALYSIS

C.S.H.B. 3270 amends the Education Code to revise provisions relating to the public school accountability system and associated interventions and sanctions and to clarify related powers of the commissioner of education and certain commissioner appointees.

C.S.H.B. 3270 establishes that the commissioner's power to delegate ministerial and executive functions to Texas Education Agency (TEA) staff and to employ division heads and any other employees and clerks to perform TEA duties are valid delegations of authority, notwithstanding any other law.

C.S.H.B. 3270 establishes that if an order, decision, or determination is described as final and unappealable in Education Code provisions relating to public education, no interlocutory or intermediate order, decision, or determination made or reached before the final order, decision, or determination may be appealed.

Commissioner Special Investigations

C.S.H.B. 3270 replaces references to a "special accreditation investigation" under public school system accountability provisions with references to a "special investigation." The bill explicitly authorizes the commissioner to authorize a special investigation on the following grounds:

- to determine if an academic program offered by a public school district is providing students the quality education to which they are entitled by applicable state law, including the following:

- the proportion of students in each demographic group participating in the program;
- whether an excessive number of students are participating in a particular program or being exempted from state requirements; or
- whether all students have equitable access to the program, including advanced learning options;
- regarding a district's financial accounting practices and fiscal management or to determine whether a district is complying with state and federal requirements, whether or not an investigation for either of those reasons is in response to established compliance reviews;
- regarding certain educational programs for particular student populations or special purposes; and
- regarding whether an improper use of public funds has occurred.

C.S.H.B. 3270 expands the commissioner's authority for special investigations on certain previously established grounds as follows:

- for an investigation in response to an allegation of inaccurate reported data, by removing the condition that the investigation must be in response to a complaint to TEA and by authorizing an investigation of allegedly inaccurate data reported to TEA in any manner, including a material misrepresentation made in the course of a special investigation; and
- for an investigation in response to a district's failure to produce applicable evidence or an applicable investigation report at the request of TEA, by extending the qualifying requested material from evidence or a report relating to an educator under investigation by the State Board for Educator Certification to evidence or a report on any subject.

The bill removes certain statistical patterns or anomalies relating to standardized testing and student outcomes from the specified grounds for a special investigation.

C.S.H.B. 3270 authorizes TEA to classify the identity of a special investigation witness as confidential and exempt from disclosure to the district or under state public information law if TEA determines that it is necessary to protect the welfare of the witness. The bill specifies that, if TEA finds in a special investigation involving an alleged conflict between district board members or between a board and district administration that the board has observed a lawfully adopted policy, TEA is prohibited from substituting its judgment for that of the board only if the adopted policy does not otherwise violate a law or rule.

C.S.H.B. 3270 authorizes the commissioner, based on the results of a special investigation, to impose any accountability intervention or sanction under statutory provisions governing those actions, regardless of any requirements of those provisions that otherwise apply to that intervention or sanction. The bill authorizes the commissioner, at any time before reporting final TEA findings in a special investigation, to defer imposing an accountability intervention or sanction, lowering a district's accreditation status, or lowering a district's or campus's accountability rating until either or both of the following have occurred:

- a third party selected by the commissioner has reviewed programs or other subjects of the investigation and submitted a report identifying problems and proposing solutions; or
- a district has completed a corrective action plan developed by the commissioner.

The commissioner may decline to take the deferred action based on the results of a third-party review, a corrective action plan, or both.

C.S.H.B. 3270 establishes that an informal review by the commissioner or the commissioner's designee after a special investigation has been completed is not a contested case for purposes of the Administrative Procedure Act and that a determination or decision made by TEA under a special investigation is final and unappealable. The bill's provisions relating to special investigations apply to a special investigation authorized or initiated before, on, or after the bill's effective date.

Campus and District Performance Ratings

C.S.H.B. 3270 authorizes the commissioner, in the context of a regular performance evaluation for accountability purposes, to assign a district or campus an overall performance rating of "Not Rated" if the commissioner determines that a rating of A, B, C, D, or F would be inappropriate for any of the following reasons:

- the district or campus is located in a declared disaster area, and due to the disaster its performance indicators are difficult to measure or evaluate and would not accurately reflect quality of learning and achievement;
- the district or campus has experienced breaches or other failures in data integrity to the extent that accurate analysis of data regarding performance indicators is not possible;
- the number of students enrolled in the district or campus is insufficient to accurately evaluate its performance; or
- for other reasons outside the control of the district or campus, the performance indicators would not accurately reflect its quality of learning and achievement.

An overall performance rating of "Not Rated" is not included in calculating consecutive school years or considered a break in consecutive school years for purposes of accountability interventions and sanctions.

C.S.H.B. 3270 requires the number of consecutive school years of unacceptable performance ratings for each district and campus, if applicable, to be made publicly available not later than August 15 of each year in addition to the performance ratings of each district and campus. If the bill takes effect later than August 15, 2021, TEA must publish that information as soon as practicable after the bill's effective date.

C.S.H.B. 3270 specifies that the scope of the TEA process for a district or charter school to challenge a TEA decision relating to an accountability rating includes a challenge to a TEA determination of consecutive school years of unacceptable performance ratings. The district or school may not challenge a decision relating to such a determination in another proceeding if the district or school has had an opportunity to challenge the decision in the manner provided by the commissioner by rule.

Accountability Interventions and Sanctions

C.S.H.B. 3270 authorizes a conservator or management team appointed for purposes of certain accountability interventions and sanctions to exercise the powers and duties specified in applicable statutory provisions or defined by the commissioner as powers and duties of a district-level conservator or management team, regardless of whether the conservator or management team was appointed to oversee the operations of a district in its entirety or the operations of a certain campus within the district.

C.S.H.B. 3270 requires a conservator appointed by the commissioner for certain district-level oversight purposes involving the implementation of an updated targeted improvement plan to be appointed to that role unless and until either of the following conditions are met:

- each campus in the district for which a campus turnaround plan has been ordered receives an acceptable performance rating for the school year; or
- the commissioner determines a conservator is not necessary.

The bill authorizes the commissioner to authorize the modification of an approved campus turnaround plan if the commissioner determines that, due to a change in circumstances that occurred after the commissioner approved the plan, a modification of the plan is necessary to achieve the plan's objectives.

C.S.H.B. 3270 specifies that the required period of two consecutive school years that must elapse after the assignment of a conservator or management team to a district and before the commissioner may appoint a board of managers to the district is calculated from the appointment of a conservator or management team as follows:

- either to the district or to a district campus;
- for any reason;
- under any statutory provision relating to public education; and
- regardless of the scope or any changes to the scope of the conservator's or team's oversight.

These provisions apply to a conservator or management team assigned to a district before, on, or after the bill's effective date.

C.S.H.B. 3270 changes the period of consecutive unacceptable campus performance ratings after which the commissioner must intervene by closing the campus or appointing a board of managers to the district from three consecutive school years after the campus is ordered to submit a campus turnaround plan to five consecutive school years. The bill clarifies that the following constitute exceptions to the powers and duties of a district board as otherwise established by state law:

- the authority of a board of managers to exercise all of the powers and duties assigned to the district board by law, rule, or regulation;
- the suspension of the district board's powers on appointment of the board of managers; and
- the requirement for the commissioner to appoint a district superintendent if a board of managers is appointed.

The bill establishes that any decision by the commissioner relating to public school system accountability or accountability interventions and sanctions is final and unappealable.

C.S.H.B. 3270 provides for a transition period during which the commissioner must make certain interventions in applicable campuses based on a recalculation of consecutive years of unacceptable performance according to the method provided by the bill and sets out the following related provisions, which expire September 1, 2027:

- requires the commissioner to take the necessary actions as soon as practicable after the bill's effective date or the effective date of similar legislation;
- requires the commissioner to order the appointment of a board of managers for each campus that the commissioner determines to have been rated as unacceptable for more than five school years, according to the following criteria;
 - the number of consecutive school years of unacceptable performance ratings for each district, charter school, and campus is the number of unacceptable ratings assigned to the district, charter school, or campus, as applicable, since its most recent acceptable performance rating;
 - an acceptable or unacceptable performance rating includes any performance rating designated as such under the law and rules in effect at the time of issuance; and
 - a rating of "Not Rated" is considered neither acceptable nor unacceptable; and
- provides for the application of statutory exemptions relating to a district campus operated under a contract with certain partner charter holders, a designated mathematics innovation zone, or an accelerated campus excellence turnaround plan; and
- prohibits these requirements from being construed to:
 - provide a school district or open-enrollment charter school additional remedies or appellate or other review for previous interventions, sanctions, or performance ratings ordered or assigned; or
 - prohibit the commissioner from taking any action or ordering any intervention or sanction otherwise authorized by law.

Fiscal Management

C.S.H.B. 3270 prohibits the use of state funds not designated for a specific purpose or local school funds to initiate or maintain any action or proceeding against the state or against an agency or officer of the state arising out of a decision or determination that is final and unappealable under the Education Code. The bill prohibits the use of a district's Tier 2

entitlement under the foundation school program for such a purpose or for another purpose prohibited by the Education Code. The bill expands the conduct that constitutes the Class C misdemeanor offense of failure to comply with school budget requirements to include a district trustee's vote to approve any expenditure of school funds in violation of a provision of the Education Code for a purpose for which those funds may not be spent.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3270 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes a requirement that was not in the original for TEA to make the number of consecutive school years of unacceptable performance ratings for each district and campus publicly available not later than August 15 of each year and includes a related procedural provision not in the original making that deadline for 2021 contingent on the bill's effective date. The substitute adds the following conditions to those provided in the original under which the commissioner may assign an overall performance rating of "Not Rated":

- student enrollment in a district or campus is insufficient for purposes of an accurate evaluation of performance; or
- performance indicators would not accurately reflect quality of learning and achievement for other reasons outside of the control of a district or campus.

The substitute includes provisions that were not in the original specifying that the scope of TEA procedures for certain challenges to TEA decisions regarding accountability ratings includes TEA determinations of consecutive school years of unacceptable performance ratings.

The substitute includes the following provisions that did not appear in the original regarding the commissioner's appointment of a conservator or management team:

- an authorization for a conservator or management team to exercise specified powers and duties regardless of whether the conservator or team was appointed for oversight at the campus or district level;
- a provision establishing the conditions that must be met to end the appointment of a conservator appointed at the district level for certain oversight purposes; and
- making the substitute's provisions applicable to the assignment of a conservator or management team to a school district before, on, or after the bill's effective date.

The manner in which the substitute provides for the initial retrospective implementation of certain provisions of the bill differs from the original as follows:

- the substitute sets out applicable temporary amendments to statute and specifies an expiration date of September 1, 2027, whereas the original set out applicable provisions of session law with no expiration date;
- the substitute requires the commissioner to order the appointment of a board of managers to an applicable district or charter school, while the original required the appointment of both a conservator and a board of managers;
- the identification of an applicable district or charter school differs as follows:
 - the substitute bases the identification of the applicable district or charter school on the commissioner's determination of whether a district or school campus, as applicable, has received unacceptable performance ratings for five school years and provides certain criteria for making that determination; but
 - the original established that an applicable district or charter school has not received an acceptable performance rating since the 2010-2011 school year, has received more than five unacceptable ratings since that school year, has not had

- a board of managers appointed under certain sanctions and interventions procedures, and has not been closed by the commissioner;
- the substitute does not include related provisions that appeared in the original clarifying the respective powers and duties of a district board or charter school governing body and an appointed conservator and board of managers; and
- the substitute includes related provisions that were not in the original providing for the application of certain exemptions and prohibiting certain interpretations of the bill's initial implementation provisions.

The substitute includes a provision not included in the original to make its amendments to provisions of law relating to special investigations by the commissioner applicable to such an investigation authorized or initiated before, on, or after the bill's effective date.

The substitute does not include a provision of the original making the bill's provisions applicable beginning with the 2021-2022 school year. The substitute does not include procedural provisions of the original that applied the following elements of the bill retrospectively:

- provisions relating to an overall performance rating of "Not Rated";
- the provision requiring closure of a campus or the appointment of a board of managers to the district after the campus receives unacceptable performance ratings for five consecutive school years; and
- the provision expanding the range of commissioner decisions that are final and unappealable.